
Governor's Small Business Regulatory Review Board

September 8, 2008

Matthew J. Frank, Secretary
Department of Natural Resources
101 South Webster Street
PO Box 7921
Madison, WI 53703

Re: Proposed DNR – 40, Invasive Species Administrative Rule
CR 08-074

Dear Secretary Frank:

Wisconsin 2004 Act 145 created the Small Business Regulatory Review Board (SBRRB) to serve as a voice for small businesses as defined in Wis. Stats. 227.114(1). The SBRRB's statutory authority for review of proposed rules is contained in Wis. Stats. 227.14(2g) and provides that an agency shall submit the proposed rule and the small business impact analysis to the SBRRB when the agency determines that the impact of that rule has a significant impact on small business. Although proposed DNR - 40 was not submitted to the SBRRB as having a significant impact on a substantial number of small businesses, the SBRRB did receive testimony on behalf of affected small businesses regarding the economic impact of DNR 40 at its August 27, 2008 meeting. As Chairman of the Small Business Regulatory Review Board, I am submitting the outcome of the SBRRB's review at that meeting.

The SBRRB received testimony on behalf of the Wisconsin Aquaculture Association (WAA). This testimony reflected the concerns of WAA with respect to the department's failure to identify and analyze the economic impact on commercial fish farmers as required in Wis. Stats., 227.14(2). Through the department's testimony, the SBRRB learned that the omission of reference to the commercial fish farmers as an affected entity was due to a department oversight. The department acknowledged that they were aware of the economic impact of the rule through the industry's involvement as members of the Species Assessment Groups. The department recognizes their failure to comply with Wis. Stats. 227.14(2) 6 by excluding the required small business impact analysis and supporting documentation about the affect of the rule on commercial fish farmers when submitting the Notice of Hearing to legislative council.

The consensus of the members of SBRRB is to have the department appear at an upcoming October meeting and submit a revised small business impact analysis that specifically identifies the rule's cost impacts on members of the aquaculture industry. Although the department may be of the opinion that the rule does not have a significant economic impact on the commercial fish farmers, the SBRRB concludes that only a thorough and diligent review can allow the department to make such a determination. If a thorough analysis does reveal that there is a significant economic impact on the aquaculture industry then the SBRRB will also consider how the department applied the rulemaking considerations contained in 227.114(2).

The Department of Commerce Small Business Ombudsman will schedule the October meeting and will be requesting attendance of department staff and any interested members of the aquaculture industry. Following the October meeting, the SBRRB will conclude their review of the department's compliance and issue their comments to the department and legislative council as provided in Wis. Stats. 227.14(2g).

The SBRRB appreciates the department's compliance with the Small Business Regulatory Fairness Act of 2005 that provides the assurance that regulators understand how rules impact small business and consider ways to reduce the negative impact of rules on our state's small business community.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard E. Petershack", written over a horizontal line.

Richard E. Petershack, Chairman
Governor's Small Business Regulatory Review Board

Cc: Mary Ellen Volbrecht, Executive Assistant
Laurie Osterndorf, Administrator, Division of Land
Mike Staggs, Director, Bureau of Fisheries Management
Al Shea, DNR Small Business Regulatory Review Board
Carol Turner, DHS Small Business Regulatory Review Coordinator
Ron Sklansky, Joint Legislative Council